

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:98CR199
)	
v.)	
)	
ANTHONY HARDY,)	MEMORANDUM OPINION
)	
Defendant.)	
)	

This matter is before the Court on defendant's motion "under Federal Rules of Criminal Procedure Rule 12(b)" (Filing No. 116). This motion was filed on April 18, 2005.

The defendant entered a plea of guilty to an indictment charging him with a conspiracy to distribute or possess with intent to distribute a substance containing crack cocaine. He was sentenced on April 11, 2000, to a term of imprisonment for one hundred eighty-eight (188) months, followed by five years of supervised release with special conditions. On April 21, 2000, defendant filed a notice of appeal with the United States Court of Appeals for the Eighth Circuit, and on May 22, 2001, the Court of Appeals for the Eighth Circuit filed an opinion affirming defendant's sentence.

On March 11, 2002, defendant filed motion for an order to correct the presentence report and accordingly modify his sentence, and on April 25, 2002, that motion was denied. On September 23, 2002, defendant filed a motion pursuant to Title

28, U.S.C. § 2255, to modify and/or correct his sentence. Following some intermediary motions, this motion was denied on January 30, 2003 (Filing No. 109).

The present motion filed pursuant to Federal Rule of Criminal Procedure 12(b) relies upon a rule of procedure applicable only to motions filed before trial and not to post-trial motions. The Court cannot consider the motion as a motion filed pursuant to 28 U.S.C. § 2255. If it were an original motion, it would be untimely filed and would be denied. In this case, it would have to be deemed a second motion filed pursuant to 28 U.S.C. § 2255, which is not permitted without having obtained prior permission from the United States Court of Appeals. No such permission has been granted.

There is no basis for the present motion. It raises issues which have been resolved in previous rulings of this Court and of the United States Court of Appeals. It is without merit and should be denied. A separate order will be entered in accordance with this memorandum opinion.

DATED this 26th day of April, 2005.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court